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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

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Amendment of Part 21 of the )  
Commission's Rules for the )  
Domestic Public Fixed Radio Services )

CC Docket No. 93-2

**COMMENTS**

GTE Service Corporation, on behalf of its domestic, affiliated, telephone, equipment, and service companies ("GTE"), responds to the FCC's Notice of Proposed Rulemaking, FCC 93-5 (Feb. 9, 1993) ("Notice" or "NPRM") proposing to allow Point-to-Point Microwave Radio Service ("PPMS") applicants to commence construction of the proposed facilities upon filing FCC Form 494 (Application for a New or Modified Radio Station License Under Part 21) prior to the grant of an authorization, if certain requirements are met.

**SUMMARY**

GTE supports the Commission's efforts to reduce the time that PPMS applicants encounter seeking authorization to operate microwave facilities, but the current proposal only addresses one piece of the process. Allowing commencement of construction of the facilities sooner than currently allowed without giving attention to expediting the authorization to operate the facilities fails to achieve the improvement that is possible if the Commission expands its proposed rules to address the entire process from start to finish. GTE also believes that certain changes proposed to FCC Form 494 will have unintended

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results that will increase rather than decrease the burdens on PPMS applicants and the FCC Staff. While GTE supports eliminating FCC Form 494A, a method to keep data bases current needs to be developed. Finally, GTE believes that reducing the Construction Period from the current 18 months to 6 months does not reflect the time typically required to construct facilities and, thus, the period should be reduced to no less than 12 months to avoid having the PPMS applicants file and the FCC Staff review and grant extensions of time due to normal construction delay conditions.

### **DISCUSSION**

#### **I. THE PROPOSED RULES ARE A STEP IN THE RIGHT DIRECTION, BUT THE JOURNEY TO REAL IMPROVEMENT MUST INVOLVE MORE THAN THIS PROPOSAL ENCOMPASSES.**

One of the key characteristics of PPMS which makes it attractive and useful to telecommunications firms is the potential speed in which it can be deployed. However, the regulatory authorization process, due to its administrative complexity, has extended the start-to-finish time necessary to use this service. The instant proposal offers relief in one stage of the process -- relief that will aid the PPMS applicants to bring their service to the public sooner by reducing time delays and costs -- thus serving the public interest. Current rules require that PPMS applicants coordinate their proposed use of spectrum with other users prior to filing an application for new or modified facilities.<sup>1</sup> Currently, construction of the facilities cannot begin until the applicant receives

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<sup>1</sup> This includes coordination with satellite operators for some bands.

authorization to do so from the Commission.<sup>2</sup> In the majority of cases, applications that have been properly frequency coordinated prior to filing have been routinely granted without undue Commission Staff involvement. The Commission now proposes to amend the rules to allow an applicant to begin construction of facilities after the filing of FCC Form 494 when certain conditions are met. In general, routine applications "which raise no special issues" would be permitted to begin construction prior to authorization.<sup>3</sup> The applicant in such circumstances bears the risk that its application may not be ultimately granted or that the facilities may have to be altered or relocated prior to an authorization to operate.

GTE believes this proposal is "on target" and exemplifies the kind of regulatory environment that industry and regulators should be striving for. Several years ago manufacturers adopted "just-in-time" inventory systems that minimized the amount of storage, handling and costs they encountered. GTE proposes that the Commission adopt a "just-when-needed" regulatory approach.

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2 Refer to Public Notice DA 93-77, released January 27, 1993.  
"[A]pppearance of these [PPMS] applications on public notice as required by the Communications Act does not constitute authority to construct or operate."

3 This new process would specifically exclude an application that: (1.) is mutually exclusive with a previously filed application or has a petition to deny filed against it; (2.) requests a rule waiver, although the Commission may wish to specify that certain routinely requested waivers (e.g., waivers for frequency diversity operation) would not disqualify an applicant from pre-authorization construction); (3.) is returned as unacceptable for filing; (4.) has not evidenced a determination from the Federal Aviation Administration or the Commission, where required, that the proposed antenna structure is not a hazard to aviation and is properly marked and lighted; (5.) has not demonstrated proper assessment of the environmental effects of the facility; and (6.) is for facilities within 56.3 kilometers of the U.S.-Canadian or U.S.-Mexican border or subject to frequency coordination by treaty or agreement.

Under such an approach, routine matters that are operating smoothly, like the PPMS applications that would be eligible for pre-authorization construction, should be streamlined to further reduce the amount of Commission Staff involvement. In the instant proceeding, this streamlining should also be applied to the process that grants authorization to operate the facility once it has been constructed. Pre-construction authorization alone does not allow an applicant to operate its facility to serve the public need. The FCC should also look at this second step in the process.

**II. GTE SUPPORTS ALLOWING PPMS APPLICANTS TO ALSO START CONSTRUCTION OF MODIFICATIONS TO EXISTING FACILITIES WHEN SUCH MODIFICATIONS ALSO MEET THE SAME CRITERIA AS NEW CONSTRUCTION.**

In paragraph 7 of the Notice, the Commission seeks comment on whether pre-authorization construction is applicable to modifications as well as applications for new facilities. GTE supports extending pre-authorization eligibility to modifications that fit the same criteria as new facilities. There are no additional concerns that would warrant not providing the same relief to modifications that is proposed to benefit new applications.

**III. UNLESS THE GRANTING OF THE AUTHORIZATION TO OPERATE PPMS FACILITIES IS ALSO STREAMLINED, THERE WILL STILL BE AN UNACCEPTABLE DELAY WHICH HINDERS THE APPLICANT'S SERVICE TO THE PUBLIC AND IS, THUS, NOT IN THE PUBLIC INTEREST.**

GTE perceives there are at least two points in the process of authorizing applications to operate its facilities that are still potential administrative "snags." The first occurs when applications are delayed in being placed on Public Notice. The second occurs after the expiration of the Comment period afforded by the

Public Notice and before the Commission acts on the application. GTE notes that recent actions by the Commission have improved the processing interval for PPMS applications. However, even a good system can be further improved. GTE proposes the following expedited handling to further increase the overall efficiency of the authorization process.

GTE recommends that the FCC give consideration to the following. If a PPMS applicant's filing is not placed on Public Notice within 60 days of its filing, the applicant could be deemed to have been granted Special Temporary Authorization ("STA") to operate the facilities as coordinated and applied for, with the expectation of an expeditious grant by the Commission of the original application. If the Commission does not want an automatic STA program, then the applicant could apply for the STA and provide evidence that the applicant had followed proper filing procedures by including a copy of the FCC Form 494 application with the dated "FCC Stamp/Mellon Bank." In the STA request the applicant must certify that the facility will operate as coordinated and as applied for in order to ensure that interference does not occur. Either of these programs would only be rarely used as long as the processing interval at the FCC stays under 60 days. GTE is pleased that current applications are appearing on Public Notice in approximately two weeks. However, unforecasted volume or other unforeseen events could lengthen this interval, and there should be a safety valve in the rules.

If a PPMS application is timely placed on Public Notice and no party opposes the application, the applicant should be able to begin operation of the facility shortly after the Public Notice period ends. Clearly, the application would have passed the "period of risk" and will in all likelihood be granted in the course of normal processing. Moreover, all potentially affected parties will have had the opportunity to express their concerns during the public comment period and the

public interest will have been served. The Commission could always intervene for good cause, but without such intervention, the PPMS applicant should be allowed to operate the facilities covered by the application. Only when both the construction and the authorization intervals are viewed as two integrated parts of the same process, will real end-to-end benefits be realized by the applicants and the public.

**IV. REDUCING THE CONSTRUCTION PERIOD FROM THE CURRENT 18 MONTHS TO 6 MONTHS WILL GENERATE MORE ADMINISTRATIVE WORK FOR THE PPMS APPLICANTS AND THE COMMISSION STAFF.**

In many instances a construction period of 6 months is not practical when you take into consideration the ordering times and backlog situations that exist in the equipment markets, site acquisition and zoning approval, and the seasonal construction conditions that exist in many parts of the country. GTE believes that despite everyone's best intentions and concerted actions, 6-month construction periods will often require more requests for extensions of time than the Commission realizes. Even if equipment were always readily available, weather conditions (i.e., frozen sites, wet weather conditions, seasonal high water levels, road weight limit restrictions, etc.) many times delay construction such that the 6 month construction period would elapse prior to completion of the facilities. By adopting a 12-month construction period, the Commission Staff and the PPMS applicants will not have the additional burdens of filing, reviewing and granting extension requests.<sup>4</sup>

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<sup>4</sup> GTE would not be opposed to leaving the construction period at its current 18-month interval.

**V. PROPOSED CHANGES TO FCC FORM 494 WILL HAVE UNINTENDED RESULTS INCREASING THE BURDEN ON PPMS APPLICANTS.**

The Commission proposes to eliminate FCC Form 430 and have the PPMS applicant report licensee qualification information on an expanded FCC Form 494. At first blush this sounds like a reduction in the reporting requirements of the PPMS applicants. In reality, this will cause a substantial increase in the filing burdens on the applicants and the FCC Staff reviewing the applications. Today, FCC Form 430 is filed annually and is only required to be updated when there has been a change that warrants revision. By, in effect, placing all the detail that was contained in the FCC Form 430, plus additional information that is currently on FCC Form 702 and FCC Form 704, and information that has never been provided on previous applications onto an expanded FCC Form 494, every time an applicant files for an additional license or a modification of an existing license, the voluminous material may have to be repeated. Since all this data was not required in the past, GTE questions why it needs to be supplied now. GTE believes it would be more efficient to just file the annual FCC Forms 430 and refer to them in the FCC Form 494. If there is a change required, the applicant can attach a new FCC Form 430 or a letter with the new information. Thus, GTE urges Item 29 of the proposed 494 Form to only require a YES response and reference to the on-file 430 Form, or a NO response and indication that a new 430 Form is attached. Questions 29 (a) through 29 (m) should be removed from the 494 Form. Licensees already have 430 Forms on file due to other radio services such as Part 25, and, combining questions does not eliminate a filing, it ends up requiring two. In addition, some of these questions go beyond even 430 information and require voluminous filings.

**VI. THE COMMISSION SHOULD REQUIRE PPMS APPLICANTS THAT ABANDON THEIR PLANS TO CONSTRUCT AFTER FILING A FCC FORM 494 TO NOTIFY THE COMMISSION OF THEIR FAILURE TO BUILD, THEREBY CORRECTING THE FREQUENCY ASSIGNMENT DATA BASES AND MAKING THE FREQUENCIES AVAILABLE TO OTHERS IN A TIMELY MANNER.**

While GTE supports elimination of unnecessary forms and streamlining of the regulatory process, one very troubling aspect of the proposed rule changes should be modified so that spectrum assignments that are never put into service are not left to lay fallow. GTE supports the elimination of FCC Form 494A. However, if a PPMS applicant abandons its construction project, and fails to notify the Commission, that spectrum will continue to be shown as assigned to the applicant for future coordination purposes. The frequency data base records will not be updated unless and until this information is brought the Commission's attention. GTE recommends that if the FCC eliminates FCC Form 494A, the Commission establish a requirement that any abandoned projects be reported in a timely manner, thereby allowing that spectrum to be used by other PPMS applicants. The instrument need not be formal, a simple letter containing the pertinent information would be sufficient, but ought to be a requirement under Part 21.

**CONCLUSION**


GTE supports most of the FCC's proposals. However, the Commission needs to look at the total overall approval process and not just one portion. Modifications should also be accorded streamlined treatment. If there is any delay in processing a PPMS application, automatic or liberal STAs should be considered, especially where no party has objected. The construction period should only be reduced to 12 months, not 6 months, although GTE would not



object to leaving it at 18 months. Shifting filing requirements from one form to another does not improve the situation. Especially when the current requirement is to file annually, and the proposal is to file voluminous data with each 494 Form. GTE urges maintaining the current FCC Form 430 process.

Respectfully submitted,

**GTE Service Corporation**, on behalf of  
its domestic, affiliated, telephone,  
equipment, and service companies

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